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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JAMES H. FISHER,

11 Plaintiff,

No. CIV S-05-0540 MCE EFB P

12 vs.

13 N. DIZON, et al.,

14 Defendants.

ORDER

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16 Plaintiff is a prisoner without counsel seeking relief for civil rights violations. *See* 42  
17 U.S.C. § 1983. This action proceeds on the March 21, 2005, complaint in which plaintiff alleges  
18 that he was sexually assaulted, beaten and repeatedly awakened early in the morning and  
19 threatened with knives. Plaintiff moves to compel defendants to respond to interrogatories and  
20 requests for production of documents. *See* Fed. R. Civ. P. 37(a)(2)(B). He also seeks  
21 defendants' personnel records. Defendants oppose on the grounds that the discovery requests  
22 plaintiff served were late, the motion to compel is late and plaintiff did not serve discovery  
23 requests seeking defendants' personnel records. For the reasons explained below, the court finds  
24 that plaintiff's motion should be denied.

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1 **I. Facts**

2 On July 28, 2006, the court issued a scheduling order pursuant to Rule 16 of the Federal  
3 Rules of Civil Procedure. *See* Docket # 35. In it, the court ordered that discovery would close  
4 on November 3, 2006, and that all discovery requests must be served no later than 60 days before  
5 that date. On September 21, 2006, plaintiff served on defendants' counsel interrogatories and a  
6 request for the production of documents. Opp'n, Ex. A at 15. On October 31, 2006, counsel for  
7 defendants wrote to plaintiff explaining that she did not intend to respond to plaintiff's discovery  
8 requests because they were served late. On November 27, 2006, plaintiff filed a motion to  
9 compel.

10 **II. Interrogatories and Requests for Production of Documents**

11 As stated, plaintiff seeks to compel responses to these discovery requests, and defendants  
12 oppose on the ground that the requests and this motion are late. Pursuant to the scheduling  
13 order, discovery closed on November 3, 2006, and all discovery requests had to be served no  
14 later than 60 days before that date. Thus, plaintiff had to serve his interrogatories and request for  
15 the production of documents no later than September 4, 2006. A scheduling order may be  
16 modified only on a showing of good cause, meaning that the party could not meet the deadline  
17 despite exercising due diligence. Fed. R. Civ. P. 16(b); *Johnson v. Mammoth Recreations, Inc.*,  
18 975 F.2d 604, 609 (9th Cir. 1992). Here, defendants have submitted evidence that plaintiff did  
19 not serve the discovery requests until September 21, 2006. Plaintiff does not contest this  
20 evidence. Nor does he explain why the requests were late. Instead, he merely asserts that he  
21 should not be held to "a stringent letter of the law, especially on technical matters that deal with  
22 timing, as plaintiff is limited to the time when he can get to the law library" to obtain copies, use  
23 typewriters, and the like. Motion at 4-5. The court finds that plaintiff served his interrogatories  
24 and requests for the production of documents beyond the time permitted in the scheduling order  
25 and he does not demonstrate that he could not, despite due diligence, timely serve them.

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Defendants also contend that the court should deny plaintiff's motion because it was filed after discovery closed. Plaintiff asserts that he knew at the time of his October 2006 deposition that defendants had not responded to his discovery requests, but he relied on counsel's representation at that time that a response would be forthcoming. Motion at 4. As stated, discovery closed on November 3, 2006. On October 31, 2006, counsel wrote a letter to plaintiff explaining that the parties would not respond to the discovery requests because they were late. Applying the mailbox rule, *see Houston v. Lack*, 487 U.S. 266, 270 (1988), plaintiff did not file his motion to compel until on November 14, 2007, 11 days after discovery closed. He does not explain why he waited so long to file the motion. Thus, he fails to demonstrate good cause under Rule 16(b). Plaintiff's motion to compel must be denied on the ground that it was filed beyond the time permitted in the scheduling order.

### **III. Personnel Records**

Plaintiff moves for production and *in camera* inspection of defendants' personnel records. Defendants oppose on the ground that plaintiff did not serve requests for these documents. A party may move for an order compelling discovery with respect to objections or other failure to respond to interrogatories or requests to produce documents. Fed. R. Civ. P. 37(a)(2)(B), 33(b)(5), 34(b). Plaintiff makes no showing that he served requests for these documents on any of the defendants. Therefore, there is no basis for compelling a response. Plaintiff's motion to compel personnel records therefore must be denied.

Accordingly, it is ORDERED that plaintiff's November 27, 2006, motion is denied.  
Dated: July 16, 2007.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE